

¹ 5 U.S.C. § 8101 *et seq.*

and 18, 2017 work shift she sustained an emotional condition while in the performance of duty. She attributed her condition to a pattern of managerial harassment and retaliation for job accommodations initially approved in 2008.² Appellant asserted that manager D.D. expressed a need for a “healthy manager,” assigned another employee to perform her duties, told shop steward G.M. that he was “getting rid of” appellant, and retaliated against her for reporting harassment by manager Mr. D.³ She also attributed the development of her condition to a letter received on December 18, 2017 from the employing establishment’s District Reasonable Accommodation Committee (DRAC) indicating that her accommodations would be rescinded if she did not timely respond to a request for medical information. Appellant contended that the letter was sent in error because she had not made a new request for reasonable accommodation. She also alleged that Mr. D. interrupted her December 18, 2017 meeting with supervisor M.H. to prevent her from reporting his misconduct.⁴ Appellant stopped work on December 18, 2017. OWCP assigned File No. xxxxxx731.

In a December 19, 2017 report, Dr. Shanda Smith, a Board-certified psychiatrist, diagnosed adjustment disorder with depressed mood and occupational problems. She referred appellant to an outpatient program.

In a development letter dated December 28, 2017, OWCP notified appellant of the deficiencies of her claim and informed her of the type of information needed to establish her claim. It provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit additional medical evidence.

Appellant submitted the completed questionnaire dated January 13, 2018. She alleged that on December 17, 2017, when she returned to the employing establishment after several days at another station, manager J.R. was performing her duties at her workstation. Union representative G.M. met with manager D.D., who allegedly stated that he would abolish appellant’s job. Appellant subsequently received the DRAC letter after this interaction, on December 18, 2017.

Appellant submitted a copy of the November 30, 2017 DRAC letter, addressed to her at a prior address. The letter was returned as undeliverable and forwarded to her at her address of record on December 4, 2017. In the letter, M.P. advised that if appellant did not submit requested medical information within seven days from the date of the letter, DRAC would close her request for reasonable accommodations. Appellant also provided a copy of the DRAC letter, dated December 5, 2018, which included her responses to a series of questions for reasonable accommodation. In a December 5, 2017 DRAC form, D.D. asserted that appellant’s modified position conformed to the existing accommodations against exposure to dust, cold, and noisy environments.

² Under OWCP File No. xxxxxx501, OWCP accepted that appellant sustained allergic rhinitis and other diseases of the vocal cords (singer’s nodules) on or before March 11, 2008. Appellant accepted a modified-duty position in an office setting.

³ The Board is unable to discern the first name of Mr. D from the case record.

⁴ In a December 20, 2017 statement, appellant’s husband asserted that she was distraught when she returned home from work on December 18, 2017.

In reports dated December 19, 2017 and January 5, 2018, Dr. Smith held appellant off work through January 10, 2018. Appellant also provided a January 5, 2018 report from a social worker.

By decision dated January 29, 2018, OWCP denied appellant's claim finding that she had not established that the identified employment incidents had occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 15, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She submitted a January 10, 2018 attending physician's report (Form CA-20) from Dr. Smith noting a November 2017 injury. Dr. Smith diagnosed adjustment disorder with depressed mood. She checked a box marked "Yes" in response to the question of whether the diagnosed conditions were caused or aggravated by appellant's employment, noting that appellant experienced "heightened anxiety, worry, poor concentration, and depression after being informed her job may be in jeopardy because of her physical condition." In a report of even date, Dr. Smith returned appellant to full-duty work on January 10, 2018.⁵

By decision dated May 18, 2018, after conducting a preliminary review, an OWCP hearing representative set aside OWCP's January 29, 2018 decision and remanded the case, instructing OWCP to make findings of fact concerning the alleged employment factors set forth by appellant.

On remand of the case, in a development letter to the employing establishment dated August 13, 2018, OWCP requested a supervisory statement and supporting documentation regarding the accuracy of appellant's statements. In a separate development letter of even date, it notified appellant of the deficiencies of the evidence of record and provided a questionnaire for her completion. OWCP afforded both parties 30 days to submit additional evidence.

In response, appellant provided correspondence contained in OWCP File No. xxxxxx501, dated from April 25 to September 2, 2011, regarding medical restrictions against working in cold, dusty environments and an undated e-mail about the timing of her lunch break on December 2, 2016.

In the employing establishment's response, D.D. provided an August 20, 2018 statement asserting that appellant could not be removed from her modified position unless she applied for a different job.

A copy of a March 12, 2018 Equal Employment Opportunity (EEO) settlement agreement was submitted. The agreement provided that appellant would receive full consideration for holiday pay and overtime, and management would take steps to cancel the November 2017 DRAC request.

In August 25 and 28, 2018 statements, coworkers G.M., B.J., D.H., and E.S. contended that, on unspecified dates, manager D.D. stated that he would reassign appellant or abolish her position as she could no longer work on the plant floor.

⁵ Appellant also submitted a January 14, 2018 records release form, leave forms, and evidence previously of record.

Appellant submitted September 2018 statements from her husband and son indicating that the November 2017 DRAC request and supervisory harassment caused her emotional condition.

In a September 11, 2018 statement, appellant alleged that during the summer 2017 she was harassed for reporting alleged threatening behavior by Mr. D.

By decision dated October 18, 2018, OWCP denied appellant's claim for an employment-related emotional condition finding that she had not established that the alleged employment incidents were factual. It concluded that the requirements had not been met to establish an injury as defined by FECA.

On November 20, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She contended that M.P. erred by sending the November 2017 DRAC request to the wrong address.

During the hearing, held on March 28, 2019, appellant was represented by her husband. Her husband asserted that M.P. erred as she sent the DRAC request to an incorrect address, which delayed its delivery until the response deadline had already passed and thereby allowed the employing establishment to rescind appellant's accommodations. Her husband explained that appellant's realization that her accommodations could be rescinded caused her significant emotional distress as she feared for her employment.

Appellant submitted December 19, 2017 and November 14, 2018 reports from Dr. Smith attributing her adjustment disorder with depressed mood to her feelings of job insecurity and the DRAC request, as well as therapy notes from social workers.

By decision dated June 3, 2019, OWCP's hearing representative found that the traumatic injury claim should be converted to an occupational disease claim as appellant identified workplace events which occurred over more than one work shift. However, she denied the claim finding that appellant had failed to establish a compensable employment factor. The hearing representative found that she had established as factual that she received the DRAC letter and that another employee performed appellant's duties during the December 17 to 18, 2017 shift, but that these were administrative matters not considered to be within the performance of duty and that no error or abuse had been established. She further found that appellant had not established as factual that Mr. D. prevented appellant from speaking with her supervisor during the December 17 and 18, 2017 work shift. The hearing representative directed that OWCP combine OWCP File No. xxxxxx501 with the instant claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

⁶ *Supra* note 1.

employment injury.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

To establish an emotional condition causally related to factors of a claimant's federal employment, the individual must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. In the case of *Lillian Cutler*,¹⁰ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations in which an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation.¹¹ When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.¹² However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.¹³

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.¹⁴ However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.¹⁵ Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant

⁷ A.J., Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹⁰ 28 ECAB 125, 129 (1976).

¹¹ *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *see G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

¹² *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 10.

¹³ *Lillian Cutler*, *id.*

¹⁴ *See B.S.*, Docket No. 19-0378 (issued July 10, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, *supra* note 9 at 608.

¹⁵ *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.¹⁶

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.¹⁷ Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.¹⁸ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁹

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant attributed her condition, in part, to M.P. sending a letter regarding her reasonable accommodations to an incorrect address, such that she received it after a crucial deadline had passed causing fear of losing her employment position. The record establishes that, in a November 30, 2017 letter, M.P. requested updated medical information regarding appellant's continuing workplace accommodations. Appellant was afforded her seven days from the date of the letter to submit such evidence or her request for accommodations would be closed. The letter was sent to her former address and was returned to M.P. as undeliverable. It was thereafter forwarded to appellant on December 4, 2017 and delivered to her on or about December 18, 2017, after the seven-day deadline had already passed. The Board finds that she has established administrative error by M.P. as the November 30, 2017 letter was misaddressed, resulting in her missing a deadline impacting her reasonable accommodations relating to a prior employment injury.²⁰ The Board finds that this administrative error constitutes a compensable factor of employment for purposes of establishing appellant's emotional condition claim.²¹

Appellant also alleged that the DRAC letter was improperly sent by M.P. as she had not made a new request for reasonable accommodation. She has not, however, submitted evidence to support this allegation. Appellant did submit a March 12, 2018 EEO settlement which indicates that the employing establishment would take steps to cancel the November 2017 DRAC request. However, there is no evidence of record that it was, in fact, withdrawn or had been improperly mailed to appellant. The Board has held that the mere fact that personnel actions are later modified

¹⁶ *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁷ *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁸ *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, *supra* note 9; *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *Thomas D. McEuen*, *id.*

¹⁹ *Id.*

²⁰ *G.S.*, 09-0764 (issued December 18, 2009); *Hong D. Nguyen*, 54 ECAB 453 (2003).

²¹ *Id.*

or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.²² Therefore, appellant has not established the mailing of the DRAC letter constitutes a compensable employment factor.

Appellant also attributed her emotional condition to harassment and retaliation over her need for accommodations due to a prior employment injury and for reporting alleged misconduct by manager D.D. To the extent that disputes and incidents alleged as constituting harassment, discrimination, and retaliation by supervisors and coworkers are established as occurring and arising from the employee's performance of his or her regular duties, these could constitute compensable employment factors.²³ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment are not compensable under FECA.²⁴ Unsubstantiated allegations of harassment, retaliation, or discrimination are not determinative of whether such conduct occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.²⁵ While four coworkers submitted statements alleging that D.D. mentioned reassigning appellant or eliminating her position on unspecified dates, they did not provide the date or specific content of D.D.'s remarks, or the context in which they had been made. The Board finds that these allegations are too vague to meet her burden of proof.²⁶ Moreover, in the December 5, 2017 DRAC form and an August 20, 2018 statement, D.D. explained that he could not remove appellant from her modified position unless she herself sought a different job. The Board finds that D.D.'s statements negate her allegations of an intent on his part to remove her from her accommodated position.

Appellant also experienced feelings of job insecurity as she believed that D.D. planned to abolish her modified position or assign her to a different job. However, the Board has held that when an injury or illness results from an employee's feelings of job insecurity or frustration from not being permitted to work in a particular environment or hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.²⁷ Appellant has thus failed to establish a compensable employment factor as to her claimed job insecurity.

Appellant also alleged emotional stress because manager J.R. had been assigned to perform appellant's job duties or otherwise assist her in her work. However, the assignment of work is an administrative function of the employing establishment and, absent error or abuse, a claimant's

²² *A.C.*, *supra* note 12; *Paul L. Stewart*, 54 ECAB 824 (2003).

²³ *David W. Shirey*, *supra* note 14.

²⁴ *Jack Hopkins, Jr.*, *supra* note 15.

²⁵ *L.S.*, *supra* note 15; *James E. Norris*, 52 ECAB 93 (2000).

²⁶ *W.F.*, *supra* note 18; *Jack Hopkins, Jr.*, *supra* note 15. See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence). See also *M.G.*, Docket No. 16-1453 (issued May 12, 2017) (vague or general allegations of perceived harassment, abuse, or difficulty arising in the employment are insufficient to give rise to compensability under FECA).

²⁷ *B.G.*, Docket No. 18-0491 (issued March 25, 2020); *D.J.*, Docket No. 16-1540 (issued August 21, 2018).

disagreement or dislike of such a managerial action is not compensable.²⁸ The Board therefore finds that appellant has not submitted the necessary corroborating evidence to establish error or abuse by management in this administrative matter.²⁹

Finally, appellant attributed her emotional condition to Mr. D. interrupting her December 17, 2017 meeting with a supervisor either in person or by telephone. She did not, however, provide witness statements or other evidence corroborating her account of events. As such, the Board finds that this alleged incident has not been established as factual.³⁰

As appellant has established a compensable factor of employment of administrative error in mailing the DRAC letter to the incorrect address with a seven-day deadline, OWCP must review the medical evidence of record in order to determine whether she has established that her emotional condition is causally related to this compensable factor.³¹ Following this and such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

²⁸ *L.S.*, *supra* note 15.

²⁹ *Id.*; *see also R.V.*, Docket No. 18-0268 (issued October 17, 2018).

³⁰ *W.F.*, *supra* note 18.

³¹ *Z.S.*, Docket No. 16-1783 (issued August 16, 2018); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 18, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board